

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Overton and Senior Judge Baker
Argued at Norfolk, Virginia

WILLIE J. GREEN

v. Record No. 2526-97-1

COMMONWEALTH OF VIRGINIA

OPINION BY
JUDGE NELSON T. OVERTON
DECEMBER 8, 1998

FROM THE CIRCUIT COURT OF THE CITY OF HAMPTON
Christopher W. Hutton, Judge

Charles E. Haden for appellant.

Leah A. Darron, Assistant Attorney General
(Mark L. Earley, Attorney General, on brief),
for appellee.

Willie J. Green (defendant) appeals his convictions of carjacking, in violation of Code § 18.2-581, and the use of a firearm in the commission of a carjacking, in violation of Code § 18.2-53.1. He contends the trial court erroneously ruled that, upon conviction, Code § 18.2-53.1 required imposition of a mandatory three-year sentence. Because we find no error in the trial court's ruling, we affirm.

The evidence adduced at trial proved that defendant and an accomplice stopped Josie Majette in the parking lot of the Sentara Hampton General Hospital on February 22, 1997. Defendant threatened to use a gun if Ms. Majette did not relinquish her car keys. When Ms. Majette did so, defendant and his accomplice fled in her vehicle. They were later stopped for a different offense and arrested. Defendant was fifteen years old at the time of the offense.

Defendant was transferred to the circuit court pursuant to Code § 16.1-269.1 and tried as an adult for carjacking and use of a firearm in the commission of a carjacking. Defendant was found guilty of both offenses. At defendant's sentencing hearing, the Commonwealth asserted Code § 18.2-53.1 required the trial court to impose a three-year, unsuspended sentence for the firearm offense. Defendant's counsel requested that defendant be given a suspended sentence pursuant to Code § 16.1-272(A)(1).

The trial court ruled that "the firearm section [Code § 18.2-53.1] and its mandatory sentence, did take precedence" over the juvenile code sentencing provisions. The trial court, therefore, imposed a three-year sentence for that offense.

Code § 18.2-53.1 contains an extremely restrictive sentencing provision whereby:

Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a term of imprisonment of three years for a first conviction, and for a term of five years for a second or subsequent conviction under the provisions of this section. Notwithstanding any other provision of law, the sentence prescribed for a violation of the provisions of this section shall not be suspended in whole or in part, nor shall anyone convicted hereunder be placed on probation.

(Emphasis added). However, Code § 16.1-272(A)(1) provides that a juvenile convicted of a violent felony will be sentenced as an adult "but the sentence may be suspended conditioned upon successful completion of such terms and conditions as may be

imposed in a juvenile court upon disposition of a delinquency case." At first blush, these code sections appear to conflict because one allows what the other specifically prohibits.

Appellate courts called upon to interpret statutes have relied upon the following principles:

While in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity. Where the legislature has used words of a plain and definite import the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed.

Caprio v. Commonwealth, 254 Va. 507, 512, 493 S.E.2d 371, 374 (1997) (citing Barr v. Town & Country Properties, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990)). When a statute is clear and unambiguous, "a court may look only to the words of the statute to determine its meaning." Hubbard v. Henrico Ltd. Partnership, 255 Va. 335, 339, 497 S.E.2d 335, 337 (1998).

The statutes in question use easily understood terms to impart an equally clear meaning. Code § 18.2-53.1 states that courts "shall" sentence one convicted of the use of a firearm in the commission of a felony to a mandatory sentence "[n]otwithstanding any other provision of law." The word "notwithstanding" is defined as "without prevention or obstruction from or by." Webster's Third New International Dictionary 1545 (1993). Given that understanding of the word, we

conclude that the terms of Code § 18.2-53.1 are not limited by other incongruous laws because the General Assembly intended Code § 18.2-53.1 to function "without obstruction" from them. Nothing in Code § 16.1-272 contradicts this interpretation. Further, Code § 16.1-272 does not contain mandatory language as does Code § 18.2-53.1.

Our interpretation of the statutes is also in concert with our opinion in Lafleur v. Commonwealth, 6 Va. App. 190, 366 S.E.2d 712 (1988). In Lafleur, we interpreted Code § 18.2-53.1 in light of Code § 19.2-311, which allowed alternate sentencing for certain youthful offenders. We found that the purpose of Code § 18.2-53.1 was to "'to deter violent criminal conduct rather than to reform the most dangerous class of criminals.'" Id. at 192, 366 S.E.2d at 713 (quoting Ansell v. Commonwealth, 219 Va. 759, 763, 250 S.E.2d 760, 763 (1979)). To apply the juvenile sentencing provisions in place of the mandatory sentence in Code § 18.2-53.1 "would substitute a discretionary penalty for an inflexible one." Id. Because "[t]he General Assembly has directed a contrary policy which courts must follow," we held a mandatory sentence was rightfully imposed. Id. We are under no less a burden to follow the General Assembly's clear mandate in this case.

We hold that Code § 18.2-53.1 required the trial court to impose a three-year, unsuspended sentence despite the provisions of Code § 16.1-272. Because the trial court did not err by

imposing the sentence, we affirm defendant's convictions.

Affirmed.